IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 350 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHKUMAR KARSANBHAI SOLANKI

Versus

DY. COLLECTOR AND SUB-DIVN. MAGISTRATE

Appearance:

1. Criminal Revision Application No. 350 of 2001

MR SL VAISHYA for Petitioner No. 1

RULE SERVED for Respondents No. 1,3-5,7-8

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 2

RULE UNSERVED for Respondent No. 6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. Leave to delete respondent no.6.

#. This Revision Application arises from the order dated 29th June, 2001 made by the learned Sub-Divisional Magistrate, Deesa in MAG Case No.4/2000.

#. It appears that the petitioner is the resident of Ambedkar Chawk area of Deesa Town. Feeling aggrieved by the construction of a shopping complex in the said area by the respondents nos.3 and 4, the applicant had moved the above Application MAG Case No.4/2000 for removal of nuisance under Section 133 CrPC. It was the specific allegation of the petitioner that the said construction was made in contravention of the sanctioned plans. The respondents nos.3 and 4 has not provided for parking place and have made construction on the land reserved for parking. The respondents nos.3 and 4 also are alleged to have made encroachment on the public road. The said application has been rejected by the Sub-Divisional Magistrate. Under the impugned order, it is observed that the petitioner's residence is some 99 feet away from the offending construction and that the offending construction does not create public nuisance as alleged.

#. To me, it appears that the approach of the Sub-Divisional Magistrate is perfunctory. The Sub-Divisional Magistrate has not given any finding in respect of the specific allegations made by the petitioner. It was the bounden duty of the Sub-Divisional Magistrate to consider the allegations made by the petitioner and to give a clear finding on the said allegations.

#. In above view of the matter, the Revision Application is allowed. The impugned order dated 29th June, 2001 (Annexure-'A' to the Revision Application) is quashed and set aside. The matter is remanded to the Sub-Divisional Magistrate, Deesa for hearing and decision afresh. The Sub-Divisional Magistrate, Deesa shall give clear finding on each of the allegations made by the petitioner. The interim order made pending the above application before the Sub-Divisional Magistrate shall continue to operate till hearing and final disposal of the said application in accordance with this order. Rule is made absolute.

19th December, 2001. (Ms. R.M. Doshit, J.)

/sakkaf